

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Wayne Thomas Daye

Case No. 10-81019

Chapter 13

Soc. Sec. No. xxx-xx-5396

Mailing Address: 539 Riddle Avenue, Hillsborough, NC 27278-

Debtor

MOTION TO MODIFY PLAN

NOW COMES the Debtor, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on June 10, 2010, with the Chapter 13 plan being subsequently confirmed on September 16, 2010.
2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:

From: \$517.00 per month

To: \$517.00 per month through October, 2010, followed thereafter by \$427.00 per month, starting in April, 2011.
3. In addition, the Debtor requests a "waiver" to move his Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. As a condition of receiving this waiver, the Debtor agrees that, should any subsequent payments be more than thirty (30) days delinquent within the twelve (12) months following the entry of this Order, that the Debtor's case may be dismissed without further hearing by the Court. The Debtor agrees that any Order allowing such waiver shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
 - A. The Debtor continues to seek employment. He anticipates obtaining approval for additional disability income shortly but needs some relief from his Chapter 13 plan payments until either he obtains a job, or his disability income increases.
5. The proposed dividend to unsecured creditors has not changed, and remains 100% due to equity above exemptions.

5. An Amended Schedule I for the Debtor is attached hereto and is incorporated hereto by reference.
6. An Amended Schedule J for the Debtor is attached hereto and is incorporated by reference.
7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325.

Appended Application for an Additional Attorney Fee

8. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:
 - a. Calls from and to the Debtor to discuss changes in his situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtor accordingly; and
 - b. Contact with the Trustee's office concerning the proposed modification; and
 - c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
 - d. Drafting this Motion and Certificate of Service; and
 - e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and
 - f. Filing of the Motion; and
 - g. Prospective attendance with Debtor at the hearing upon the motion, if any; and
 - h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
 - i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtor.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: February 17, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Koury Hicks

Koury Hicks
North Carolina State Bar No.: 36204
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

CERTIFICATE OF SERVICE

I, Koury Hicks, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on February 17, 2011, I served copies of the foregoing **MOTION TO MODIFY PLAN** by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee
P.O. Box 3613
Durham, N.C. 27702-3613

Michael West
U.S. Bankruptcy Administrator
P.O. Box 1828
Greensboro, N.C. 27402-1828

Wayne Thomas Daye
539 Riddle Avenue,
Hillsborough, NC 27278-

All creditors with duly filed claims as listed on PACER

/s Koury Hicks

Koury Hicks

In re **Wayne Thomas Daye**

Debtor(s)

Case No. **10-81019**

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:		DEPENDENTS OF DEBTOR AND SPOUSE	
Divorced	RELATIONSHIP(S):	AGE(S):	
	Son (Non-Custodial)	13	
	Girlfriend	50	
	Son (Non-Custodial)	9	
Employment: DEBTOR		SPOUSE	
Occupation Unemployed since 1999			
Name of Employer			
How long employed			
Address of Employer			

INCOME: (Estimate of average or projected monthly income at time case filed)

1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)

\$ 0.00

\$ 0.00

2. Estimate monthly overtime

\$ 0.00

\$ 0.00

3. SUBTOTAL

\$ 0.00

\$ N/A

4. LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security

\$ 0.00

\$ N/A

b. Insurance

\$ 0.00

\$ N/A

c. Union dues

\$ 0.00

\$ N/A

d. Other (Specify):

\$ 0.00

\$ N/A

5. SUBTOTAL OF PAYROLL DEDUCTIONS

\$ 0.00

\$ N/A

6. TOTAL NET MONTHLY TAKE HOME PAY

\$ 0.00

\$ N/A

7. Regular income from operation of business or profession or farm (Attach detailed statement)

\$ 0.00

\$ N/A

8. Income from real property

\$ 0.00

\$ N/A

9. Interest and dividends

\$ 0.00

\$ N/A

10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above

\$ 0.00

\$ N/A

11. Social security or government assistance

\$ 569.60

\$ N/A

(Specify): Social Security

\$ 0.00

\$ N/A

12. Pension or retirement income

\$ 0.00

\$ N/A

13. Other monthly income

\$ 480.00

\$ N/A

(Specify): Live-In Girlfriend's Net Income

\$ 0.00

\$ N/A

14. SUBTOTAL OF LINES 7 THROUGH 13

\$ 1,049.60

\$ N/A

15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)

\$ 1,049.60

\$ N/A

16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)

\$ 1,049.60

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

Debtor claims due to delinquency in court-ordered marital settlement owed to him he is no longer required to pay child support indefinitely.

Effective immediately, debtor is actively seeking employment.

In re Wayne Thomas Daye

Debtor(s)

Case No. 10-81019

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	\$	0.00
a. Are real estate taxes included? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Is property insurance included? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
2. Utilities: a. Electricity and heating fuel	\$	75.00
b. Water and sewer	\$	25.00
c. Telephone	\$	0.00
d. Other	\$	0.00
3. Home maintenance (repairs and upkeep)	\$	10.00
4. Food	\$	400.00
5. Clothing	\$	25.00
6. Laundry and dry cleaning	\$	0.00
7. Medical and dental expenses	\$	10.00
8. Transportation (not including car payments)	\$	75.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$	0.00
10. Charitable contributions	\$	0.00
11. Insurance (not deducted from wages or included in home mortgage payments)		
a. Homeowner's or renter's	\$	0.00
b. Life	\$	0.00
c. Health	\$	0.00
d. Auto	\$	0.00
e. Other	\$	0.00
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify)	\$	0.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)		
a. Auto	\$	0.00
b. Other	\$	0.00
c. Other	\$	0.00
14. Alimony, maintenance, and support paid to others	\$	0.00
15. Payments for support of additional dependents not living at your home	\$	0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	0.00
17. Other See Detailed Expense Attachment	\$	447.00
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	\$	1,067.00
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: None Anticipated		
20. STATEMENT OF MONTHLY NET INCOME		
a. Average monthly income from Line 15 of Schedule I	\$	1,049.60
b. Average monthly expenses from Line 18 above	\$	1,067.00
c. Monthly net income (a. minus b.)	\$	-17.40

In re Wayne Thomas Daye
Debtor(s)

Case No. 10-81019

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED
Detailed Expense Attachment

Other Expenditures:

Miscellaneous Expenses	\$	10.00
Emergency Expenses	\$	10.00
Chapter 13 Plan Payment	\$	427.00
Total Other Expenditures	\$	447.00

CH. 13 PLAN - DEBTS SHEET (MIDDLE DISTRICT - STEP PLAN)				Date: 2/8/11			
				Lastname-SS#: Daye-5396 MtM			
RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN				SURRENDER COLLATERAL			
Retain	Creditor Name	Sch D #	Description of Collateral	Creditor Name	Description of Collateral		
ARREARAGE CLAIMS ON RETAINED COLLATERAL			REJECTED EXISTING CONTRACTS/LEASES				
Retain	Creditor Name	Sch D #	Arrearage Amount	Creditor Name	Description of Collateral		
ETD - ETD on PRINCIPAL RESIDENCE - OTHER REAL PROPERTY							
Retain	Creditor Name	Sch D #	Mortgage Payment	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
				n/a	n/a		
				n/a	n/a		
				n/a	n/a		
STD - SECURED DEBTS (Retain Collateral & Pay FMV of Collateral)							
Retain	Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
				7.00			
				7.00			
				7.00			
STD - SECURED DEBTS & PRIORITY CLAIMS (Pay 100%)							
Retain	Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
				7.00			
				7.00			
				7.00			
				7.00			
ATTORNEY FEES (Unpaid Port)		Amount		PROPOSED CHAPTER 13 PLAN			
Law Offices of John T. Orcutt, P.C.		\$2,793		\$ 427 /month for 51 months, then			
SECURED TAXES		Secured Amount		\$ N/A /month for N/A months.**			
IRS Tax Liens		\$9,413					
Real Property Taxes on Retained Realty							
UNSECURED PRIORITY DEBTS		Amount					
IRS Taxes		\$4,338					
State Taxes							
Personal Property Taxes							
Alimony or Child Support Arrearage				Definitions			
CO-SIGN PROTECT (Pay 100%)		Int. Rate	Payoff Amount	Sch D # = The number of the secured debt as listed on Schedule D.			
All 'Co-Sign Protect Debts (See***)				Adequate Protection = Required monthly 'Adequate Protection' payment.			
GENERAL NON-PRIORITY UNSECURED		Amount to Pay		* = Minimum of DMI x ACP, minus all co-sign protect debt.			
DMI = None(\$0)		\$1,361		** = Plan duration is subject to "Duration of Chapter 13 Plan" provision.			
Other Miscellaneous Provisions				*** Co-sign protect on all debts so designated on filed schedules D, E and F			
				Final_MD_Step (rev. 11/6/07) © Copyright by John T. Orcutt (Page 4 of 4)			